

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

CIVIL CASE NO. 3:08cv576

PRECISION LINKS INCORPORATED,)

Plaintiff,)

vs.)

USA PRODUCTS GROUP, INC. and)

HOME DEPOT U.S.A., INC.,)

Defendants.)

ORDER

THIS MATTER is before the Court on the Defendants' Motion for Summary Judgment of Non-Infringement. [Doc. 48].

This is a patent infringement action filed by the Plaintiff Precision Links Incorporated against the Defendants USA Products Group, Inc. and Home Depot USA, Inc. related to U.S. Patent No. 5,673,464 ("the '464 Patent").

On September 22, 2009, the Court denied the Plaintiff's Motion for Preliminary Injunction, finding that the Plaintiff had failed to establish a likelihood of success on the merits of its infringement claim. [Doc. 46]. The Defendants now move for summary judgment on the issue of infringement, arguing that "the Court's September 22, 2009 claim construction and non-

infringement findings are applicable to all the asserted claims of the '464 Patent." [Doc. 48-1 at 5].

Determination of the issue of infringement is a two-step process: first, the claims must be properly construed to determine their scope, and second, the construed claims must be applied to the accused device. Elbex Video, Ltd. v. Sensormatic Electronics Corp., 508 F.3d 1366, 1370 (Fed. Cir. 2007). Although the Court did undertake an infringement analysis in addressing the Plaintiff's motion for injunctive relief, such analysis was merely preliminary. [See Doc. 46 at 11 ("The Court has received only excerpts of the '464 Patent's prosecution file history. The Court therefore will undertake only a *preliminary construction* of Claim 1 for the purposes of this preliminary injunction motion.")] (emphasis added).

At this stage in the proceedings, the first step in the infringement analysis -- claim construction -- has yet to be completed. According to the Pretrial Order and Case Management Plan previously entered in this action, the parties' claim construction briefs are not due until December 18, 2009, and a claim construction hearing will be set tentatively during the February 8, 2010 civil trial term. Once the Court has entered an Order on claim construction, the parties will then have the opportunity to file dispositive

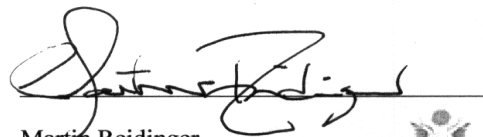
motions on the issue of infringement. [See Doc. 24 (setting deadline for the filing of dispositive motions 150 days following the entry of the claim construction order)]. Because the Court has not yet made a definitive ruling on the issue of claim construction, the Defendants' Motion for Summary Judgment of Non-Infringement is premature and must be denied.

ORDER

Accordingly, **IT IS, THEREFORE, ORDERED** that the Defendants' Motion for Summary Judgment of Non-Infringement [Doc. 48] is **DENIED WITHOUT PREJUDICE** as premature.

IT IS SO ORDERED.

Signed: November 23, 2009

A handwritten signature in black ink, appearing to read "Martin Reidinger", written over a horizontal line.

Martin Reidinger
United States District Judge

